IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 22 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

AHMEDABAD NEW COTTON MILLS CO. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 22 of 1987
MR BB NAYAK FOR MR MANISH R BHATT for Appellant.
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

1. In this Reference at the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following questions for our determination arising out of ITA No.1347/Ahd/85 inrespect of the assessment year 1984-85 :-

"(1) Whether in law and on facts, the Tribunal is right in holding that medical benefit and house rent Allowance to the Managing Director cannot be considered for the purpose of disallowance under section 40(c) of the Income-tax Act,1961?"

(2) Whether in law and on facts, the appellate Tribunal is right in holding that cash payment of a special duty allowance of Rs.16,611/- to the employees can not be considered for disallowance under section 40A(5) of the Income-tax Act,1961?

(3) Whether the assessee is entitled in law and on facts, to a deduction of Rs.4,750/- under section 80vv of the Income-tax Act,1961 ?"

2. In so far as question No.1 pertains to reimbursement of medical benefit, the controversy is concluded against the assessee by the decision of this Court in Gujarat Steel Tubes Ltd. vs. C.I.T., 210 I.T.R.358 and C.I.T. vs. Ambica Mills Ltd., 236 ITR 921. Accordingly, the first part of question No.1 will have to be answered in the negative i.e. in favour of the revenue and against the assessee.

3. In so far as the controversy about the House Rent Allowance is concerned, the same is concluded in favour of the assessee and against the revenue in as much as in C.I.T. vs. Mafatlal Gangabhai & Co.(P) Ltd., 219 I.T.R.644, the Apex Court has held that the cash payment by an assessee to his/its employees do not fall within the ambit of Section 40(a)(v) or Section 40A(5)(a)(ii), and that the words "any expenditure which results directly or indirectly in the provision of any benefit or amenity or perquisite" contemplate a situation where assessee makes a payment (in cash) in respect of an obligation of the employee, which would have been payable by the employee if it is not paid by the assessee. The

payment by the assessee contemplated by these words is evidently not a payment to the employee but to a third party, no doubt, on account of the employee.

In view of the aforesaid pronouncement of the Apex Court that cash payments by an assessee to his/its employees do not fall within the ambit of the aforesaid provision, it is obvious that the payment of House Rent Allowance by the assessee to its Managing Director in cash cannot be considered for the purpose of disallowance u/s.40(c) of the Act. Hence the second part of question No.1 is required to be answered in the affirmative i.e. in favour of the assessee and against the revenue.

4. As regards question No.2 pertaining to cash payment of special duty allowance of Rs.16,611/- to the employees, in view of the aforesaid principle laid down by the Apex Court in C.I.T. vs. Mafatlal Gangabhai And Co.(P) Ltd., 219 ITR 644 it will have to be held that cash payment of special duty allowance to the employees cannot be considered for disallowance under section 40(a) of the Act. Accordingly, question No.2 will have to be answered in the affirmative i.e. in favour of the assessee and against the revenue.

5. As far as question No.3 is concerned, since the provisions of section 80(vv) are not covered by the provisions of 80(vva), the Tribunal was right in confirming the finding given by the C.I.T.(Appeals) that the expenditure of Rs.4,750/- in connection with the legal proceedings in respect of the tax liability under the Act will have to be allowed from the balance of 30% of the income of the assessee. Accordingly, the C.I.T. was justified in deleting the addition of Rs.4,750/- made by the I.T.O. In view of the above discussion, question No.3 is also required to be answered in the affirmative i.e. in favour of the assessee and against the revenue.

6. In the result, the second part of question No.1 (Pertaining to House Rent Allowance) and question nos. 2 and 3 are answered in the affirmative i.e. in favour of the assessee and against the revenue. The first part of question No.1 regarding reimbursement of medical benefit is answered in the negative i.e. in favour of the revenue and against the assessee.

7. The Reference accordingly stands disposed of with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt